



## NOTICE OF *EX PARTE* PRESENTATION

October 2, 2003

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW B204  
Washington, DC 20554

**Re: Federal-State Joint Board on Universal Service's Request for Comment  
on Certain of the Commission's Rules Relating to High-Cost Universal  
Service Support and the ETC Designation Process, CC Docket 96-45, FCC  
03J-1**

Dear Ms. Dortch:

Please be advised that on October 2, 2003, Charles Acquard, Executive Director of the National Association of State Utility Consumer Advocates ("NASUCA"<sup>1</sup>), and Kathleen F. O'Reilly, representing NASUCA, met with Matt Brill of Commissioner Abernathy's office.

On NASUCA's behalf, they expressed appreciation that NASUCA was provided the opportunity to appear at the *en banc* hearing that was conducted by the Federal-State Joint Board on Universal Service ("Joint Board") on July 31, 2003, to discuss the above-captioned matter.

At that hearing, David C. Bergmann, Chair of the NASUCA Telecommunications Committee, made a presentation as a participant on Panel 1: *Basis of Support*. Ken Reif,

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<sup>1</sup> NASUCA is an association of 43 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, E.g., Ohio Rev. Code Chapter 4911.

Director of NASUCA member, the Colorado Office of Consumer Advocate, made a presentation as a participant on Panel 2: *Scope of Support/Measures to Control Fund Growth*. As NASUCA representatives they discussed the unique perspective of our members as representatives of the consumers who both pay for and are the intended beneficiaries of the universal service programs of the 1996 Telecom Act.<sup>2</sup>

The attached is a bullet-point summary of NASUCA's position on the issues discussed in those presentations as well during Panel 3: ETC Designation Process, for the benefit of the Federal Communications Commission ("FCC") and the Joint Board. At the October 2 meeting with Mr. Brill, NASUCA representatives provided him with the summary and discussed it with him. Also discussed were the federal guidelines for determining the public interest, service quality performance, the value of state assessment of how current USF funding is being spent, the logistics of consumers selecting which is their primary line, and pending applications.

The summary also discusses NASUCA's position with regard to the issue of adding equal access to the list of supported services,<sup>3</sup> which issue the FCC deferred to this portion of the proceeding.<sup>4</sup> The positions described in the attachment are consistent with the discussion of the issues in the comments and reply comments filed by NASUCA on April 18, 2003 and May 16, 2003, respectively.

Additionally, NASUCA representatives discussed various questions raised and positions discussed by invited participants to the *Universal Service Summit II* sponsored by Senators Burns and Dorgan, moderated by Commissioner Rowe, and held on the September 11, 2003.

Sincerely,

David C. Bergmann  
Assistant Consumers' Counsel

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<sup>2</sup> 47 U.S.C. § 254.

<sup>3</sup> 47 U.S.C. § 254(c)(1).

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170 (rel. July 14, 2003), ¶ 33.

Chair, NASUCA Telecommunications  
Committee

Attachment: Summary of NASUCA's position

cc: Members and Staff of the Federal-State Joint Board on Universal Service

**NASUCA POSITIONS ON  
HIGH-COST UNIVERSAL SERVICE SUPPORT  
AND THE ETC DESIGNATION PROCESS**

September, 2003

**Introduction**

- NASUCA's perspective is as representatives of the consumers who are intended to benefit from the universal service programs of the 1996 Act, but who also pay for those programs.
- Support should enable rates and services that are affordable and reasonably comparable to those in urban areas, but be no more than that.

**Whose costs to use to determine support?**

- Support must be portable. But portability does not equal identical support.
- Support carriers with high costs. Carriers with low costs neither need nor deserve support.
- Non-rural ILECs -- base support on statewide average forward looking economic cost ("FLEC") for all non-rural carriers (as currently)
- Large rural ILECs (>50K access lines) -- move to FLEC, but keep company-specific within each state (if FLEC > embedded, use embedded)
- Small rural ILECs -- continue to use embedded costs; however, base support on a company's entire operation within a state. Consolidate all study areas within a state owned by a single company within 2 years of rule, or within 5 years of acquisition.
- Note: US support should not be a cost-recovery mechanism.<sup>5</sup>
- CETCs should receive support based on their forward-looking costs, capped at the ILEC's costs
- The purpose of support is not to support competition; it is to support services. If CETC costs are greater than ILEC costs, then supporting CETC costs is merely supporting competition. If CETC costs are less than ILEC costs but CETCs are supported based on ILEC costs, then support is going to support competition.

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<sup>5</sup> See *Alenco v FCC*, 201 F.3d. 608, 620 (5 Cir. 2000): "The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*." (Emphasis in original.)

## **Primary lines**

- The purpose of support is to support access to services and to support the services on the 47 U.S.C. § 254(c)(1) list, not to support all services for all customers.
- Currently, support for non-primary lines is \$330M of the high-cost fund. But continued support for multiple lines is source of potential \$2B increase.
- Only primary lines should be supported, as a reasonable means of limiting the size of the fund.
- This was the original Joint Board recommendation.
- When moving to primary lines, rebase support for small rural ILECs: total embedded costs divided by primary lines, freeze per-line support upon CETC entry.
- Issue: It is difficult to determine primary lines. Response: Is that sufficient to justify supporting all lines? Currently distinctions for primary lines are made for SLCs and lifeline.
- Issue: Who chooses the primary line? Response: The customer.
- Issue: “Slamming” of primary line designation. Response: Address in the same fashion as local and long distance slamming.<sup>6</sup>
- Issue: Ensuring that rural rates for second lines will be reasonably comparable to urban rates for second lines. Response: Assumes that second lines will in fact increase such that they will not be reasonably comparable to urban second lines. But the real incremental cost of second lines is not great enough to cause such increases. Further, this is a state ratemaking issue.

## **Other steps to combat excessive fund growth in the event of substantial penetration by CETCs**

- If support is restricted to primary lines, CETC support will be for new and captured lines.
- If support is restricted to primary lines, support will be based on lines served, so CETC support is “withdrawn” from the ILEC.

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<sup>6</sup> For example, consistent with the FCC’s slamming rules, a carrier found to have designated itself as the primary line carrier could be required to forfeit 150% of the support received to the customer’s designated primary line carrier.

- Support is intended as support for services, not for networks. See reference above to support not being a cost recovery mechanism.

### **Federal guidelines for state public interest determinations**

- Supporting competition cannot be the only element of the public interest, because there would be no need for a separate public interest determination in designating CETCs
- As a minimum, a CETC should be required to offer a calling plan that provides unlimited local calling, equal access to IXCs, and a monthly price comparable to that charged by the ILEC.
- As a minimum, CETCs should be required to submit to the consumer protection rules, including billing and collection rules that apply to ILECs.
- CETCs should be required to provide data to demonstrate their need for high-cost support.
- CETCs should be required to be able to provide service to all customers within the service area within a reasonable time.

### **Other issues**

- Stakeholders are unanimous that auctions should not be considered. Auctions do not provide incentives for carriers to invest in their networks.
- Neither rate rebalancing nor increasing the SLC should be considered in this context.

### **Equal access<sup>7</sup>**

- All ETCs should provide equal access.
- Contrary to the July 14, 2003 Order and Order on Reconsideration, ¶ 33, basing ETCs' support on their own costs does not moot the arguments for equal access. Equal access is a benefit for customers, to ensure that all customers served by a carrier receiving USF have competitive choice for their long distance service without having to change their local carrier.

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<sup>7</sup> See also NASUCA June 25, 2003 *ex parte* in CC Docket 96-45.

- Equal access meets the requirements of Section 254(c)(1) and does not contravene Section 332(c)(8) of the Act.
- Equal access provides a direct, tangible consumer benefit by placing the customer in charge of deciding which long distance plan is more appropriate for that customer.
- Requiring equal access would not preclude wireless carriers from continuing to offer their highly successful all-distance bundles, but would allow customers to decide for themselves which plans are best for them.
- Equal access is even more important to rural customers who have fewer choices of carriers than urban customers.
- Equal access promotes competitive and technological neutrality; by adding equal access, all ETCs would compete on the basis of price and quality of service and no ETCs would have an unfair advantage.
- Since ETCs can abandon any area, it is absolutely essential that all ETCs be required to provide equal access. This is especially true in rural areas where consumers may find themselves served by a single ETC that does not have to provide equal access.